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21SL-CC03220 - ANNIKA BARTEK ET AL V DAVID LAWRENCE ET AL (E-CASE)

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08/20/2021

☐ [Affidavit Filed](#)

Return of Service - David.

**Filed By:** MICHAEL K. DAMING

**On Behalf Of:** JOSEPH BARTEK

☐ [Affidavit Filed](#)

Return of Service - Mychelle.

**Filed By:** MICHAEL K. DAMING

**On Behalf Of:** ANNIKA BARTEK

07/19/2021

☐ [Summ Issd- Circ Pers Serv O/S](#)

Document ID: 21-SMOS-703, for RAISBECK, MYCHELLE. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ [Summ Issd- Circ Pers Serv O/S](#)

Document ID: 21-SMOS-702, for LAWRENCE, DAVID. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.

☐ [Filing Info Sheet eFiling](#)
**Filed By:** MICHAEL K. DAMING

☐ [Note to Clerk eFiling](#)
**Filed By:** MICHAEL K. DAMING

☐ [Pet Filed in Circuit Ct](#)

Petition.

**Filed By:** MICHAEL K. DAMING

**On Behalf Of:** ANNIKA BARTEK, JOSEPH BARTEK

☐ [Judge Assigned](#)

DIV 1

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

ANNIKA AND JOSEPH BARTEK,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Cause No.
	)	
DAVID LAWRENCE,	)	
Serve at: 8910 Zephyr Ranch Rd.	)	
Zephyrhills, FL 33541-7498	)	
	)	
MYCHELLE RAISBECK,	)	
Serve at: 8910 Zephyr Ranch Rd.	)	
Zephyrhills, FL 33541-7498	)	
	)	
Defendants.	)	

**PETITION**

COME NOW Plaintiffs, Annika and Joseph Bartek, and for their Petition against David Lawrence and Mychelle Raisbeck, state as follows:

1. Plaintiffs Annika and Joseph Bartek are husband and wife, who reside in St. Louis County, Missouri, and who sustained the damages and injuries referenced herein within St. Louis County, Missouri.

2. Defendants David Lawrence and Mychelle Raisbeck entered into the contract referenced herein within St. Louis County, Missouri for the sale of certain real property located in St. Louis County, Missouri.

3. Prior to April 6, 2020, Defendants were the owners of the property commonly identified as 9909 Kimker Lane, St. Louis, Missouri (the "Property").

4. In connection with their marketing and other efforts to sell the Property, Defendants made the following representations to potential buyers of the Property, including Plaintiffs, beginning in July, 2019:

- a. That they were unaware of any dampness, water accumulation, or leakage in the basement or crawl space of the Property;
  - b. That they were unaware of any repairs or other attempts to control any water or dampness in the basement or crawl space of the Property;
  - c. That they were unaware of any violations of local laws and/or regulations relating to the Property;
  - d. That they were unaware of any claims filed for damages to the Property.
- (the “Representations”).

### **COUNT I: BREACH OF CONTRACT**

5. Plaintiffs re-state and incorporate by reference Paragraphs 1 through 4 of their Petition as if fully stated herein.

6. On April 6, 2020, the Barteks and Defendants closed on a contract (the “Contract”) whereby the Barteks purchased the Property from Defendants. A copy of the Contract is attached hereto and incorporated herein as Exhibit 1.

7. In the Contract, Defendants agreed to do the following:

- a. Have a qualified mason or chimney contractor repair or replace certain sections of spalling bricks, repair or replace damaged and/or missing mortar joints, and seal cracks in the Property’s damaged chimney crown and wood stove chimney;
- b. Install a vapor barrier and resecure the insulation in the Property’s crawl space;
- c. Make necessary repairs and/or replace the Property’s septic system.

8. Defendants breached the Contract in multiple respects, including, but not limited to failing to complete the items in the preceding paragraph.

9. As a direct and proximate result of Defendants’ breach of the Contract, Plaintiffs have sustained monetary damages.

WHEREFORE, Plaintiffs pray for judgment against Defendants in an amount in excess of \$25,000.00, their contractually authorized attorneys’ fees, pre-judgment and post-judgment interest, and for such other and further relief as this Court deems fair and reasonable.

**COUNT II: MISSOURI MERCHANDISING PRACTICES ACT**

10. Plaintiffs re-state and incorporate by reference Paragraphs 1 through 9 of their Petition as if fully stated herein.

11. The Barteks purchased the Property for purposes of living in the Property as their personal place of residence.

12. The Representations were false, and their conveyance to Plaintiffs constitutes deception, fraud, false pretense, misrepresentation, unfair practices and concealment, omission, and suppression of material facts on the part of Defendants.

13. Reliance on the Representations would cause a reasonable person to enter into the Contract.

14. As a direct and proximate result of Defendants' deception, fraud, false pretense, misrepresentation, unfair practices and concealment, omission, and suppression of materials facts, Plaintiffs were induced to and did enter into the Contract with Defendants.

15. Defendants' conduct as described herein was intentional and in violation of Mo. Rev. Stat. §407.020 and the regulations of the Attorney General of Missouri promulgated thereunder, and as a direct and proximate result of Defendants' conduct, Plaintiffs have suffered ascertainable damages.

16. Defendants at all times acted intentionally, maliciously, willfully, outrageously, and knowingly in violation of Mo. Rev. Stat. §407.020, and are liable for punitive damages in the amount of at least \$100,000.00.

17. At all pertinent times herein, Plaintiffs acted as a reasonable consumer would in light of all circumstances in their reliance on the Representations.

18. Plaintiffs have incurred and will incur attorneys' fees in prosecuting this action, for which Defendants are liable under Mo. Rev. Stat. §407.025.

WHEREFORE, Plaintiffs pray for judgment against Defendants in an amount in excess of \$25,000.00, punitive damages, their attorneys' fees, pre-judgment and post-judgment interest, and for such other and further relief as this Court deems fair and reasonable.

**COUNT III: NEGLIGENT MISREPRESENTATION**

19. Plaintiffs re-state and incorporate by reference Paragraphs 1 through 18 of their Petition as if fully stated herein.

20. Defendants owed Plaintiffs a duty of care to either act or refrain from acting so as to prevent injury to Plaintiffs.

21. Defendants' purported performance of their duties at the Property constituted a breach of their duty of care, as described in Paragraph 7 and otherwise in Count II.

22. As a direct and proximate result of Defendants' negligence as described in Paragraph 7 and in Count II, Plaintiffs have sustained and will continue to sustain significant damages, including, but not limited to, as follows:

- a. Costs and expenses associated with the remediation of the water damage in the Property's basement;
- b. Costs and expenses associated with the reconstruction of the Property following remediation;
- c. Costs and expenses associated with testing by an industrial hygienist;
- d. Costs and expenses associated with remedying the contractual violations described in Paragraph 7;
- e. The diminished value of the Property;
- f. Costs and expenses associated with the loss of use of the Property;
- g. With respect to Plaintiff Annika Bartek, medically diagnosable personal injuries.

23. Defendants conveyed the Representations to Plaintiffs in the course of marketing and attempting to sell the Property and because of Defendants' pecuniary interest.

24. Because of a failure of Defendants to exercise reasonable care, the Representations were false.

25. The Representations were provided by Defendants to Plaintiffs as members of a limited group; namely, potential buyers of the Property.

26. Plaintiffs justifiably relied on the Representations.

27. As a result of reliance on the Representations, Plaintiffs sustained monetary and personal injury damages.

WHEREFORE, Plaintiffs pray for judgment against Defendants in an amount in excess of \$25,000.00, their attorneys' fees, pre-judgment and post-judgment interest, and for such other and further relief as this Court deems fair and reasonable.

/s/Michael K. Daming

Michael K. Daming, MoBar # 52864  
Evelyn I. Sims, MoBar #60410  
Wasinger Daming, LC.  
CIBC Place, Suite 875  
1401 South Brentwood Boulevard  
St. Louis, Missouri 63144  
mdaming@wasingerdaming.com  
esims@wasingerdaming.com  
(314) 961-0400  
(314) 961-2726 FAX  
Attorneys for Plaintiffs



## IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: BRIAN H MAY	Case Number: 21SL-CC03220	(Date File Stamp)
Plaintiff/Petitioner: ANNIKA BARTEK	Plaintiff's/Petitioner's Attorney/Address: MICHAEL K. DAMING 1401 SOUTH BRENTWOOD BOULEVARD SUITE #875 SAINT LOUIS, MO 63144	
Defendant/Respondent: DAVID LAWRENCE	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105	
Nature of Suit: CC Breach of Contract		

**Summons for Personal Service Outside the State of Missouri  
(Except Attachment Action)**

The State of Missouri to: DAVID LAWRENCE

Alias:

8910 ZEPHYR RANCH RD.  
ZEPHYRHILLS, FL 33541-7498

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner at the above address all within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in this action.

**SPECIAL NEEDS:** If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

19-JUL-2021

Date

Further Information:

MT

*Joan P. Dilling*  
Clerk

**Officer's or Server's Affidavit of Service**

I certify that:

- I am authorized to serve process in civil actions within the state or territory where the above summons was served.
  - My official title is \_\_\_\_\_ of \_\_\_\_\_ County, \_\_\_\_\_ (state).
  - I have served the above summons by: (check one)
    - ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
    - ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with \_\_\_\_\_, a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.
    - ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to \_\_\_\_\_ (name) \_\_\_\_\_ (title).
    - ☐ other (describe) \_\_\_\_\_.
- Served at \_\_\_\_\_ (address)  
in \_\_\_\_\_ County, \_\_\_\_\_ (state), on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this \_\_\_\_\_ (day) \_\_\_\_\_ (month) \_\_\_\_\_ (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
- ☐ the judge of the court of which affiant is an officer.
- ☐ authorized to administer oaths in the state in which the affiant served the above summons. (use for out-of-state officer)
- ☐ authorized to administer oaths. (use for court-appointed server)

(Seal)

Signature and Title

**Service Fees, if applicable**

Summons \$ \_\_\_\_\_  
 Non Est \$ \_\_\_\_\_  
 Mileage \$ \_\_\_\_\_ (\_\_\_\_\_ miles @ \$ \_\_\_\_\_ per mile)  
**Total** \$ \_\_\_\_\_

See the following page for directions to clerk and to officer making return on service of summons.

### Directions to Officer Making Return on Service of Summons

A copy of the summons and a copy of the motion and/or petition must be served on each Defendant/Respondent. If any Defendant/Respondent refuses to receive the copy of the summons and motion and/or petition when offered to him, the return shall be prepared to show the offer of the officer to deliver the summons and motion and/or petition and the Defendant's/Respondent's refusal to receive the same.

Service shall be made: (1) On Individual. On an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and motion and/or petition to the individual personally or by leaving a copy of the summons and motion and/or petition at the individual's dwelling house or usual place of abode with some person of the family over 15 years of age, or by delivering a copy of the summons and motion and/or petition to an agent authorized by appointment or required by law to receive service of process; (2) On Guardian. On an infant or incompetent person who has a legally appointed guardian, by delivering a copy of the summons and motion and/or petition to the guardian personally; (3) On Corporation, Partnership or Other Unincorporated Association. On a corporation, partnership or unincorporated association, by delivering a copy of the summons and motion and/or petition to an officer, partner, or managing or general agent, or by leaving the copies at any business office of the Defendant/Respondent with the person having charge thereof or by delivering copies to its registered agent or to any other agent authorized by appointment or required by law to receive service of process; (4) On Public or Quasi-Public Corporation or Body. On a public, municipal, governmental or quasi-public corporation or body in the case of a county, to the mayor or city clerk or city attorney in the case of a city, to the chief executive officer in the case of any public, municipal, governmental, or quasi-public corporation or body or to any person otherwise lawfully so designated.

Service may be made by an officer or deputy authorized by law to serve process in civil actions within the state or territory where such service is made.

Service may be made in any state or territory in the United States. If served in a territory, substitute the word "territory" for the word "state."

The officer making the service must swear an affidavit before the clerk, deputy clerk, or judge of the court of which the person is an officer or other person authorized to administer oaths. This affidavit must state the time, place, and manner of service, the official character of the affiant, and the affiant's authority to serve process in civil actions within the state or territory where service is made.

Service must not be made less than ten days nor more than sixty days from the date the Defendant/Respondent is to appear in court. The return should be made promptly, and in any event so that it will reach the Missouri Court within 30 days after service.



## THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

Twenty First Judicial Circuit

### NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

#### **Purpose of Notice**

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

#### **Your Rights and Obligations in Court Are Not Affected By This Notice**

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

#### **Alternative Dispute Resolution Procedures**

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the "neutral," who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

**(1) Advisory Arbitration:** A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator's decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

**(2) Mediation:** A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

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**(3) Early Neutral Evaluation (“ENE”):** A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

**(4) Mini-Trial:** A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

**(5) Summary Jury Trial:** A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

### **Selecting an Alternative Dispute Resolution Procedure and a Neutral**

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 7900 Carondelet Avenue, 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

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The State of Missouri to: MYCHELLE RAISBECK

Alias:

8910 ZEPHYR RANCH RD.  
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COURT SEAL OF



ST. LOUIS COUNTY

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in \_\_\_\_\_ County, \_\_\_\_\_ (state), on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Subscribed and Sworn To me before this \_\_\_\_\_ (day) \_\_\_\_\_ (month) \_\_\_\_\_ (year)

I am: (check one)

- ☐ the clerk of the court of which affiant is an officer.
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(Seal)

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CCADM73

## RETURN OF SERVICE

<b>Case:</b> 21SL-CC0220	<b>Court:</b> CIRCUIT COURT OF ST. LOUIS COUNTY	<b>County:</b> ST. LOUIS, MO	<b>Job:</b> 6026219
<b>Plaintiff / Petitioner:</b> ANNIKA AND JOSEPH BARTEK		<b>Defendant / Respondent:</b> DAVID LAWRENCE, MYCHELLE RAISBECK	
<b>Received by:</b> You've Been Served Process Service		<b>For:</b> WASINGER DAMING Attorney At Law	
<b>To be served upon:</b> MYCHELLE RAISBECK			

I, Melisa Thompson, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

**Recipient Name / Address:** DAVID LAWRENCE AS CO-RESIDENT AND SPOUSE OF MYCHELLE RAISBECK, HOME: 8910 ZEPHRY RANCH RD, ZEPHYRHILLS, FL

**Manner of Service:** Substitute Service - Abode, Jul 31, 2021, 1:00 pm EDT

**Documents:** SUMMONS, PETITION (Received Jul 26, 2021 at 4:00pm EDT)

**Additional Comments:**

1) Unsuccessful Attempt: Jul 28, 2021, 2:50 pm EDT at HOME: 8910 ZEPHRY RANCH RD, ZEPHYRHILLS, FL  
ATTEMPTED SERVICE - NO ANSWER AT DOOR, RED FORD TRUCK AND WHITE GMC ON PROPERTY.

2) Successful Attempt: Jul 31, 2021, 1:00 pm EDT at HOME: 8910 ZEPHRY RANCH RD, ZEPHYRHILLS, FL received by DAVID LAWRENCE AS CO-RESIDENT AND SPOUSE OF MYCHELLE RAISBECK. Age: 55-60; Ethnicity: Caucasian; Gender: Male; Weight: 190; Height: 6'; Hair: Other; Relationship: Husband; Other: HAIR: SALT/PEPPER, MARRIED, NOT ACTIVE MILITARY;



08/18/2021

Melisa Thompson  
9042

**Date**

You've Been Served Process Service  
4728 BASSWOOD STREET  
LAND O'LAKES, FL 34639  
727-776-2093



## RETIURN OF SERVICE

<b>Case:</b> 21SL-CC0220	<b>Court:</b> CIRCUIT COURT OF ST. LOUIS COUNTY	<b>County:</b> ST. LOUIS, MO	<b>Job:</b> 6026200
<b>Plaintiff / Petitioner:</b> ANNIKA AND JOSEPH BARTEK		<b>Defendant / Respondent:</b> DAVID LAWRENCE, MYCHELLE RAISBECK	
<b>Received by:</b> You've Been Served Process Service		<b>For:</b> WASINGER DAMING Attorney At Law	
<b>To be served upon:</b> DAVID LAWRENCE			

I, Melisa Thompson, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

**Recipient Name / Address:** DAVID LAWRENCE, HOME: 8910 ZEPHRY RANCH RD, ZEPHYRHILLS, FL

**Manner of Service:** Personal/Individual, Jul 31, 2021, 1:00 pm EDT

**Documents:** SUMMONS, PETITION (Received Jul 26, 2021 at 4:00pm EDT)

**Additional Comments:**

1) Unsuccessful Attempt: Jul 28, 2021, 2:50 pm EDT at HOME: 8910 ZEPHRY RANCH RD, ZEPHYRHILLS, FL  
ATTEMPTED SERVICE - NO ANSWER AT DOOR, RED FORD PICKUP AND WHITE GMC PARKED ON PROPERTY.

2) Successful Attempt: Jul 31, 2021, 1:00 pm EDT at HOME: 8910 ZEPHRY RANCH RD, ZEPHYRHILLS, FL received by DAVID LAWRENCE. Age: 55-60; Ethnicity: Caucasian; Gender: Male; Weight: 190; Height: 6'; Hair: Other; Other: HAIR: SALT/PEPPER, MARRIED, NOT ACTIVE MILITARY;

*Melisa Thompson*

08/18/2021

Melisa Thompson  
9042

Date

You've Been Served Process Service  
4728 BASSWOOD STREET  
LAND O'LAKES, FL 34639  
727-776-2093